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THE

BALLOT DISCUSSED,

IN A

LETTER

TO

THE EARL OF DURHAM.

BY LORD NUGENT.

LONDON:
JAMES RIDGWAY AND SONS, 169, PICCADILLY
MDCCCXXXVII.

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A LETTER,

&c. &c.

My dear Lord Durham,

Feelings of long continued friendship and respect, and a political agreement, uninterrupted through difficult and changeful times, are sufficient personal motives with me for wishing to dedicate the following argument to your Lordship. And through whom with greater propriety than through one deservedly occupying so high and forward a station in the publick view, and holding the opinions which you have unvaryingly declared on the subject of the argument itself—through whom with greater propriety can it be addressed to the country? The question of applying the Ballot to the Election of Members of Parliament is daily pressing itself with more and more urgency on the attention of the government and the nation. I cannot but believe that the probabilities of its ultimate success are likely to make themselves manifest and indubitable in the course of the ensuing Session. If so, the various reasonings upon a question usually contested with so much warmth, and often with so

little precision, ought to be very strictly analysed, and opinions carefully reviewed. It is no longer enough to express a fixed judgment upon it, either way, supported by mere vague generalities. In whatever relation a man stands to the State, whether as a Legislator, an Elector, or a mere Petitioner to Parliament, he is bound in duty to himself to examine calmly and thoroughly the grounds on which his judgment has been formed. He is bound in duty to the judgment which he has so formed to assure himself that he can maintain and justify it.

It appears to me as if there were something in the question of the Ballot which invited and provoked declamation. At all events it has occasioned much, on both sides. Large principles assumed on the one part as if universally acknowledged, but entirely unconceded on the other; violent indiscriminate imputations on each side made, and as violently denied, and angrily cast back. I challenge a short truce from declamation, I claim for a time a laying aside, if possible, of all conclusions whose reasonableness shall not have been carefully enquired into; and I demand, as I have a right to demand, that our arguments may be examined as we state them for ourselves, and not as they are misrepresented by our adversaries.

No man can fail, I think, to see that the principle of the Ballot has rapidly advanced upon the publick notice since the last General Election.

Many converts have, I believe, been made, (not perhaps all by the most publick-minded process of conversion,) among those who, having, before a contest, claimed credit from what are called moderate Reformers by declared hostility to the Ballot, have felt, in the course of their discomfiture, what had not previously occurred to them, how intolerable are the influences of intimidation and of corruption among the Electors. Of this particular class of converts I might perhaps be thought to speak with some personal sympathy, had not my own opinions in favour of the Ballot, as you know, been formed and expressed some years ago.

But, besides the support of these, I know that a great proportion also of considerate and disinterested judgment has of late enlisted itself on our side.

These great questions, as they approach a practical decision, require to be repeatedly reasoned before the publick.

I grant that the burthen of proof rests mainly upon us who recommend so entire a change in the manner of Election.

I grant that no case is made for adopting it, unless a strong necessity be first established.

I grant that the adoption of the Ballot is not justifiable, unless the objections which we generally hear advanced against it can be clearly shewn on examination to be unfounded in reasoning.

This, and much more than this, I think may be done.

First, I think, we may assume, on experience and notoriety, that, for want of some guards as yet unapplied, for the protection of free voting, the provisions of the Reform Bill are exceedingly defective. Defective to the extent of leaving popular Election, where popular Election existed before the passing of that measure, in some cases, (I mean principally in those of the Agricultural Districts,) and in some respects, working worse than before;—influence more active, compulsion more direct, corruption more shameless. The interference of landlords, clergymen, attorneys, creditors, mortgagees, aroused to greater activity, and their respective power more effectually applied to further and support that interference. Direct nomination has, it is true, been abolished. A great good. Constituencies, it is true, have been enlarged, and Corporations thrown open. Great principles have been acknowledged and established by the Reform Bill. These principles I hold to have been—First, To give a free voice to all those districts and classes which are entrusted with the privilege and duty of choosing representatives for themselves and for the rest of the nation. Secondly, To distribute that privilege and duty fairly and beneficially among the districts and classes. And thirdly, To guard them, as far as possible, against abuse, and against the action of corruption and usurpation from without.

My object is to shew, not that secret voting is an universal specifick which, alone and unassisted, can complete the whole design of the Reform Bill, and render it efficient of all its purposes; but that it is in strict accordance with all these purposes, and will tend materially to assist and further them. My object is also to shew that no one of the objections the most generally and forcibly urged against secret voting is fairly imputable to it, but that, generally, the exact reverse of all those propositions is true.

I have observed that great confusion is often occasioned in the conduct of the argument on Secret Voting, by our adversaries suddenly breaking through the midst of it with another proposition, namely, that, do what we will, real secrecy is unattainable. Now, if this be admitted, of course the argument is at an end; or, if the two questions be entertained together, we get into a circle, and the argument becomes interminable. Let us therefore, in common fairness, at the commencement of an attempt to prove that secret voting is expedient and free from the objections urged against it, be allowed this simple postulate, that by secret voting shall be understood to be meant a mode of voting by which secrecy is really attainable. And, when the argument of its expediency and of the unsoundness of the objections to it, (assuming it to be attainable,) shall have been concluded, we will endeavour to shew that it

is also attainable, in spirit and in substance, in principle and in action.

The first objection which I wish to consider, naturally the first in order, as it undoubtedly is in importance, is of a grave sort indeed. It is generally placed, and very properly placed, in the front of our adversaries' battle, and has been used as a main ground of reasoning in an article which appeared in the Edinburgh Review of January 1833; an article extremely important on every account; not only as a compendium of all the principal arguments against the Ballot, but as a sort of protest against it, supposed to be from high authority in support of the principles of the Reform Bill, but in opposition, as the question then stood, to those of secret suffrage. I say very properly placed in the front of our adversaries' battle; because, if it be made good, as a necessary or probable consequence of secret suffrage, we must at once admit that no advantage which such a system could offer, no improvement whatever in the mode of collecting the free sense of the constituency, could compensate to society for the infliction of so deep and wasting a wound on social faith in the transactions between man and man. It is alleged that an entirely new channel of Fraud and Falsehood would be opened up, threatening to overflow all the lower levels of the constituency; and that a new principle of Fraud and Falsehood thus intro-

duced might taint the national character for many generations of men to come.

A fearful prognostick, and well worthy the most earnest attention. We must not, however, recoil from the mere sound of large and fearful words; but try the meaning and value of them diligently, and inquire why this evil is expected to arise out of the secret system—out of what part of the secret system it is expected to arise—in what way it is expected to be practised—on what subjects—and for what purpose. For on none of these points is the article in question, nor indeed are our adversaries generally, very precise. They generally assume a necessary connexion between secrecy and cowardly fraud, and between publicity and manly honesty, and thus, having invested themselves with the exclusive championship of a great and acknowledged moral principle, take the inference by storm.

I wish to come to close quarters with the matter thus propounded, and to shew that the system of secret voting, instead of engendering Fraud and Falsehood, will, consequentially and effectually, tend to cleanse popular election from Fraud and Falsehood; at least from all such Fraud and Falsehood as can have reference to the question of how votes are to be given or have been given.

We must begin at the lowest step; by no means intending to evade the higher, but to approach them in their turn.

First then, let us admit for a moment our adversaries' assumption, that he who wishes to know how his neighbour's vote will be given or has been given, shall, by the operation of the secret system, lose all reasonable ground of confidence in the truth of his neighbour's word upon the subject.

Now this hypothesis, observe, presumes two things. It presumes, first, a purpose, on the part of the questioner, which I think may be shewn to be a fraudulent and illegal one. And it presumes, secondly, a mode, on his part, which I think may be shewn to be a very foolish one, of endeavouring to accomplish his fraudulent and illegal purpose.

The Franchise is a privilege, vested in the voter by law; to be administered, according to his conscience and best judgment, for the publick good. What is the questioner's motive in asking the question? That his own judgment may be satisfied as to how his neighbour's privilege has been administered.

But the questioner's motive goes much further than the gratification of a merely impertinent curiosity. If it have any serious object worth consideration, it must, by construction, be a corrupt or a vindictive, and, in either case, an illegal object. If the question be put before an Election, and have reference to a vote to be given, the object of it must be to gain, by some mode of corruption, a controul which the Constitution does not intend, which the Law does not give, and which the Law

forbids under penalties. If it be after an Election, and have reference to a Vote already given, its object must be to gain, by interrogatory, information on which to punish the free exercise of that which the Constitution intends, which the Law has given, and which the Law declares it has given to be exercised freely. In the first of these cases, the object is simply corruption. Because that which acts upon pecuniary considerations through fear is as much corruption as that which acts upon them through hope. Pecuniary Intimidation is as corrupt an agent as Bribery. And, whether the object be to purchase by a payment in advance, or by an insinuated hope of future payment, or of a benefit in prospect, (such as continuance in a holding to a tenant, or continuance of custom to a tradesman, with the contingent alternative, threatened or hinted, of loss,) every such mode of traffick has equal reference to pecuniary considerations, is equally against the Elector's Oath, and equally an attempt at a corrupt and fraudulent bargain. It is an avowed object and duty of all law, for the protection of the publick interests and the publick morals, to break up and destroy all confidence between parties conspiring to effect a corrupt and fraudulent bargain. The law by no means countenances any pretended sentiment of honourable compact for a corrupt and fraudulent purpose.

This mock chivalry and counterfeit good faith in what is itself sordid and dishonest can meet with no respect or sympathy under any but a very imperfect code of ethicks of law and of social habits. The Law in every case openly invites to breach of engagement between such parties. It invites witnesses, in inquiries into corruption at elections, by exempting them from any penalties which might result to them from the proof of their own participation in such corruption. The Statute of 3 Edw. I., cap. 5, makes every attempt, *of great men or others*, to interfere with the freedom of a vote *by menace* highly penal,*—punishable, according to Lord Coke, by fine and imprisonment, who thus lays it down as law.†

Only one observation more, in passing from this, the lowest and certainly the least inviting view of the subject, I mean the advantage derived by the

* " Et pur ces que Elections doivent etre franches, le Roi defende, sur sa greve forfaiture, que nul haut home, n'autre, per poiar desarmes, ne pur menaces, ne distourbe de faire fraunche election."—*Ruffhead's Edit. of the Statutes.*

† Second Institute, p. 168. The whole of the passage in Lord Coke as interpreting this statute, and as embracing the whole subject of the illegality, both by statute and common law, of interference by menace at Elections, is eminently worthy of attention. The statute of Edward has its place in Mr. Raithby's Index, and is found in Ruffhead's edition among the statutes still in force, not being distinguished by the letters " Obs." or " Exp." which are applied by the Editor to all which are obsolete or expired.

upright, and honourable, and loyal part of the community from the facilities offered to the base, and dishonourable, and lawless, to deceive each other. On fraudulent and unlawful engagements and promises the doctrine of Dr. Paley is well known. He not only lays down as a duty the breach of unlawful promises, and gives, as an instance, if, after the promise of a vote, "a better candidate appear, and it be a case where you are bound by oath or *otherwise*, to govern yourself *by the qualification*," but broadly justifies the telling a falsehood under terror, or duress, to *conceal your property*, or "*where the person to whom you speak has no right to know the truth.*" Dr. Johnson, also, in the midst of a passage enforcing strict veracity as one of the first of moral duties, speaks doubtfully as to a case where the party questioned has no means but by denial to conceal a secret which belongs to him, and to which the questioner has no right.*

Now, remember, "non meus hic sermo." Let me not be misconceived or misrepresented as poising any part of my argument in favour of secret voting upon any such nice casuistry as the enquiry into what may or may not, under special duress, or the stress of conditions in themselves unlawful and criminal, be considered as excusable falsehoods. Still less on so base a practical morality as that

* See Paley, Mor. and Polit. Philo: Edit. 1806, vol. i. p. 148. 208. And Boswell's Life of Johnson Edit. 1804, vol. iv. p. 328.

which would dispense with truth to escape danger or loss. I venture no opinion on the question thus propounded to the judgment or the doubts of these great ethical writers. If I did, it would probably be that it is for the most part unadvisable and dangerous to found practical rules of conduct on extreme cases, while we have plain broad general rules, in analogy with which the conscience will probably guide aright when cases of exception arise. I use the authority of Dr. Paley then only to the extent of this doctrine, which, indeed, common sense and common justice, upon a moment's consideration, sufficiently establish, that at all events the Questioner has no right to complain, if, at the outset, having placed the other party in the cruel dilemma between the being false to a corrupt private engagement or the being false to a high publick duty, he find that the engagement has given him no security, and, in the end, that it has deceived him. He, at least, has been the tempter in the fraud, and has no right to lay what has been the result of his own crime to the charge of the institution of secret voting. If he find himself deceived, it is only that he, and not the law, will have taught to his dependant that "fœdum crimen servitutis," those last defences of the slave against the tyrant, dissimulation and fraud.

Now, as to the manifest Folly of the interrogatory. First, the Interrogatory put before the Election. Either secret voting will, as our opponents

allege, destroy confidence in promises, or it will not. If it will not, then that imputation, the foremost in use among our adversaries, the main and cardinal objection of the author of the article of 1833 in the Edinburgh Review, is at an end. If it will, then the very vice it engenders must, just in proportion to its prevalence, diminish the prevalence of the other vice of Interrogation, and must itself burn out for want of the fuel of interrogation which deception requires to feed upon. And thus the evil prophesied will in this case cease to afflict the land almost as soon as its presence shall have been felt. Much of the cajolery, much of the meanness and fraud, and all the corruption and intimidation now practised in a canvass would be abolished. A canvass would probably be reduced very nearly to what it ought to be. An opportunity for submitting a candidate to a personal examination as to principles, opinions, and pretensions. The insinuated promise, the hinted penalty, abolished; and all that degrading importunity at an end which so lowers the canvasser in his own esteem, and in that moral dignity which should belong to a man presenting himself as fit to be selected, by many and from among many, for a high trust.

But, if the Interrogatory be put after the Election, it can then be put only for the purpose of gaining evidence on which to reward or punish.

And here it becomes a yet vainer sort of enquiry. The agent of the reward would hardly dispense it to the voter on the voter's own unsupported assurance, that he had duly earned it. The minister of punishment would hardly expect the defaulter (who has already for the sake of a favourite candidate broken the promise extorted by his landlord) to submit himself by a conscience-stricken confession to the punishment which he gave the false promise rather than risk. The natural result then appears to me to be that questions would cease to be asked whether before or after voting, and that Secret Suffrage would supersede, together with the habit of Interrogatory, all the temptation to the threatened *new* Vice of Fraud and Falsehood at Elections. That is to say, supposing the voting to be, in truth, secret voting; on which supposition, remember, the question is argued.

But, if secret voting will introduce no *new* Vice of Fraud and Falsehood, let us see if there be no *old* Vice of Fraud and Falsehood, now practised in open voting, which is the result of open voting, which necessarily associates itself with open voting, and which would be abolished together with it. I will explain what I mean.

It will not, I presume, be denied that the Elective Franchise is a privilege, with duties, corresponding and commensurate, attached to it.

These duties are, first, to conform strictly to the spirit of all the conditions set forth in the elector's

oath. That oath extends far beyond the having received no bribe. It extends to the having received not only no employment, gift, or reward, but no promise thereof. Now I desire to guard my argument against any quibbling distinction between the voting from the promise of reward, or voting from the expectation or fear of punishment. It is, as we have before argued, the same case, whether the vote be given from hope of pecuniary advantage or from fear of pecuniary loss.

The duties which belong to the voter, and are attached to the privilege of the franchise, are, secondly, to vote for the candidate or candidates whom he believes worthiest. To exercise any privilege, without performing the duties belonging to it, is a Fraud. Whoever then governs or sways his vote by any motive, except his own sense of the superior worthiness of those he votes for, is guilty of a Fraud. And whoever by any hint, the most remote, biasses a man in respect of a vote, through hope of a pecuniary advantage or fear of loss, is guilty of defrauding him of a privilege, given to him for his own use, and not for that of another, and is moreover guilty of conspiring with him to defraud the publick of its right to the vote, freely given, for the candidate or candidates whom this voter in his conscience believes fittest, among those presented to his choice, to represent the people.

So much for the Fraud practised under, and

arising out of, the open system. Now as respects the Falsehood. A vote is the publick testimony we give to what we believe to be the fitness of those for whom we vote. If we give that vote, away from him whom we believe to be the fittest, to another, we give false testimony. The vote becomes then a Falsehood, told for our own private interests, to the injury of the interests of the commonwealth.

So much for the Falsehood practised under, and arising out of, the open system.

Grant me, what is sometimes lost sight of, that a deception practised on the publick is of *equal* turpitude with a deception practised against an individual. And now, then, I submit that, unless there be some proveable fallacy in the foregoing arguments, this is the result. First, that, under the secret system, if any fraud or falsehood arise, it will be practised only against the private corruptor, by those who now, under the open system, practise it, at his procurement, against the publick; and that thus there will be no new principle of fraud or falsehood introduced. And secondly, that as, under the secret system, there will be nothing to be gained by interrogatory, influence must take some other course; it will not exercise itself in questions before or after an election, and, pro tanto, the Fraud and Falsehood now practised will cease. That not only, then, no new system of deception will be introduced, but an old one will be destroyed.

But let me not forget that a great portion of our

Adversaries' case on the Fraud and Falsehood, and indeed the principal portion of the case as set forth in the Article in the Edinburgh Review in January, 1833, turns, not upon the deceit expected to be practised in answer to the direct Interrogatory, but upon the habitual hypocrisy which it is said would be necessary on the part of the dependent voter who has voted against his Landlord, to sustain the deception, and to give effect to the protection which the Ballot extends to him. A systematick concealment and denial of those political opinions in conformity with which the secret vote was given, and the avowal or detection of which would amount to an avowal or detection of what the Ballot is to render secret. A system, says the Reviewer, under which "the voter's whole life must be so adjusted, as to deceive the person whose vengeance he has reason to dread;" or, under which, as a later writer less temperately phrases it, "his whole life must be a lie."* This Argument should not be neglected. It is only necessary, however, to point out that precisely the same answer applies itself to the subject of the sustained hypocrisy which has been already given to that of the particular falsehood. The voter who is now obliged, in open voting, to use his suffrage against his opinions, is in like manner forced into so adjusting his whole life as to deceive, not only the

* "Thoughts on the Ballot," Ridgway and Sons, 1837.

person whose vengeance he has to dread, but every body else also. At every publick meeting he swells the retinue arrayed to make head against his real wishes and principles. At every convivial meeting he greets with cheers the speech which his judgment may silently disapprove, and haply his taste may ridicule; he honours with an apparently hearty bumper the toast which he secretly eschews, and receives with an apparently hearty welcome the party champion, against whom he would fain have voted, but dared not. Surely it is plain that to impute to the system of secret voting that, under it, this sort of sustained hypocrisy may in some instances be necessary to ensure the protection of the dependent voter, is only to say that, in those instances, secret voting will leave unremedied that degrading daily fiction, that "adjustment of a whole life to deceive," which is practised by every dependent voter *now* who is obliged by open voting to bend his suffrage to dictation.

To conclude this part of the Argument. If in any case any man disappoint another's calculations by the use he makes of his own vote under the secret system, he can disappoint them only under the belief on his own part that he is doing a publick good, and at the instigation of his own judgment as to what tends to the publick good. If he deceive the publick as to his real opinion, in open voting, it can be only under some influence of private interest, and

at the instigation of another person who has no legal or constitutional right to interfere. If he commit an error or injustice of private judgment in secret voting, that error or injustice can extend no further than his own vote. If he commit an error or injustice in open voting under dictation, his example may be the cause of a like error or injustice in an indefinite number of other men.

It is said, by some, that property ought to be represented, not only positively but proportionally. That the larger proprietor, having a larger interest in the general prosperity of the commonwealth, ought to have a larger interest in the choice of the Representative; and hence the expediency of a controul over voters. This may be a maintainable doctrine; I only wish to observe that it is not, and never was, the doctrine of the English Constitution, nor any thing like any doctrine ever maintained by any Constitutional Lawyer, or any Text Commentator on the Constitution of England. The English Constitution originally presumed that every man, above the condition of a serf, and competent to afford Frank Pledge, was entitled to vote. As servitude passed through its several gradations and denominations to its final extinction in England, this principle also underwent a change, and property became gradually the general test of qualification to vote; probably as the best general test, in those times, of political independence; and was finally declared so by the Statute of Hen. VI., giv-

ing the elective Franchise to all 40*s*. Freeholders. The positive influence of property in Parliamentary Elections is recognised by law, and by usage of long unbroken duration. But the proportional influence of property in Parliamentary Elections is no where recognized; on the contrary, one free vote is distinctly awarded to every person qualified. If it be intended to admit an accumulative rate of influence, proportionate to amount of property, in Parliamentary Elections as at vestry, let the holder of so much property be declared by statute to be entitled to so many votes, instead of that end being indirectly arrived at by means corrupt in themselves, and in absolute violation of many statutes. If neither the constitution nor the law recognise such proportionate influence, the exercise of it is not Right, but Usurpation.

Is this a doubtful or a speculative view of the subject? Is it one adopted of late, and only to suit the opinions of modern constitution-mongers? What says Sir William Blackstone? It is a very remarkable passage.

" First,—as to the qualification of the electors. The true reason of requiring *any* qualification with regard to property in voters is *to exclude such persons as are in so mean a situation, that they are esteemed to have no will of their own.* If these persons had votes, they would be tempted to dispose of them under some undue influence or other. This would give *a great, an artful, or a wealthy man*

a larger share in Elections than is consistent with general liberty. If it were probable that *every man would use his vote freely, and without influence of any kind,* then, upon the true theory and genuine principles of liberty, *every member of the community,* however poor, *should have a vote in electing those delegates* to whose charge is committed the disposal of his property, his liberty, and his life. But, since that can hardly be expected in persons of indigent fortunes, or *such as are under the immediate dominion of others,* all popular states have been obliged to establish certain qualifications, whereby *some who are suspected of no will of their own* are excluded from voting, *in order to set other individuals, whose wills may be supposed independent, more thoroughly upon a level with each other.*" Blackstone's Comment. Vol. i. p. 170. So that Sir William Blackstone's constitutional objection to Universal Suffrage, and indeed it appears to be the sound one, is the increased power that it would give to those "great, artful, and wealthy" men, to prevent whose influence a qualification of property was established, in order "that every man should use his vote freely, and without influence of any kind."

Neither is this to be forgotten, that, of the three things which Sir William Blackstone reminds us our representatives have in charge, namely, Property, Liberty, and Life, the two most important are those in which the poor man has an equal interest with the rich.

Let me not be told that I have any where been interdicting the proper deference which the less well informed voter would generally be disposed to pay to the advice of the better informed in the disposal of his vote. I freely admit property to be generally no unfair element, among many others, in the calculation of the qualities competent to assist in forming a due judgment on publick affairs and publick men. Because it gives that leisure for collecting materials on which such a judgment must be formed, which is not afforded to him who is constantly occupied in manual labour. The wealthier man, then, cannot surely perform a kinder or more patriotick duty towards the poorer voter, if the poorer voter should apply to his better information for advice, than in giving such advice freely and strenuously. But conscience easily detects, in each case, the limits which separate advice from controul. On the other hand, then, I am entitled to say, that he who, in the matter of a vote, brings any controul to act upon the pecuniary interest of another, upon his hopes or upon his fears, is endeavouring to appropriate to himself by power what by right is another's; a practice to which, wishing to avoid the use of harsh terms, I would rather that another should apply the appropriate name than I.

The legitimate Influence of Property at Elections is a very different thing. And, if he who possesses property recommend himself to his neighbours by

his reputation for publick mindedness and knowledge befitting his station, he may depend upon it his advice will often enough be asked, his judgment abundantly deferred to, and, if the Ballot were in action, and to whatever party in the State such a man might belong, his opinions would powerfully influence the votes of his neighbours.

I recommend the secret mode of voting, not as weakening, but as strengthening, and considerably strengthening, this legitimate influence. I say considerably strengthening it.

An adventurer comes down to a Borough containing a few hundred voters. With this Borough he is entirely unconnected. But, having, by some successful speculation, or perhaps by the assistance of some political association, possessed himself of a sum sufficient to undertake an enterprise of this sort, he applies it to operating on the corruptibility of this small constituency, or the majority of it. We have seen, by manifold experience, that the application of head money, and a judicious generosity during the election time, have not, to say the least of it, been less effectual in recent instances than before the passing of the Reform Bill, in inducing the Constituencies of either small or large places to sell their votes, in the coarsest manner, to trading strangers, in opposition to claims of ancient connexion, of legitimate influence of property, as well as personal and political ties long established. I say

that the prior and natural inclination of such a Constituency, (at all events, of that poorer portion of them, a large one, who cannot be supposed to be governed by any strong political bias,) would be to vote in accordance with the sentiments of the resident gentry who have been the longest and best known to them; were it not for the operation of a temporary bargain, the very terms of which depend upon its being seen whether the votes are given to the party which has bought them. I say, no adventurer would be rash enough to speculate on the strength of his mere purse against the natural and legitimate influence of neighbouring property, when he can no longer be assured of the vote being duly exchanged for the money. I say, where all the pre-existing attachments, from habit, if from no better feeling, are in favour of neighbouring property, the chance comer with the purse would not risk it under a system of secret voting, having no security for a due return; or if he were to try the speculation, he would try it without success.

I recommend secret voting, no less as a protection for the Legitimate Influence of Property, than for Lawful Independence of the Elective Franchise.

The Elective Franchise, we have been told, is a trust, vested in those of the community who are qualified to vote, to be exercised by them in behalf and for the benefit of those who do not possess the qualification reqnired by law, but who still are represented by the members returned to serve in Par-

liament. From these premises, which are stated with great want of precision, a strange and most illogical inference is drawn; namely, that the enfranchised are, *therefore*, personally answerable to the unenfranchised for the manner in which that trust is exercised, and that, *therefore*, the trust ought to be exercised in publick.

The enormous fallacy of the first part of this proposition, and which runs through the whole, rests on the use of the word "Trust." The term is one to which there is a clear legal and moral definition attached, no part of which can with propriety be applied to the relation in which the enfranchised part of the people stands to the unenfranchised. A trust is a duty to which the trustee is specially appointed by or on behalf of another. The voter undertakes his duties, not by appointment, but by right of Inheritance or Purchase. A trustee is removeable for abuse of trust; which constitutes his real responsibility. The voter lies under no real responsibility to the unenfranchised. He lies under no moral responsibility whatever in the discharge of his duty, except that moral responsibility, under which every man lies, to his own judgment and conscience, to administer his own property justly, and for the publick good as well as for his own. Lastly, a trust is a thing to which the trustee is not only appointed by another, and for the due administration of which he is really answerable to an-

other; but which, furthermore, he is appointed to administer for the exclusive benefit of another, and of which he is therefore debarred from making any use to his own benefit. A vote is a thing which a man not only derives from his own right alone, and for which he is really answerable to his own judgment and conscience alone, but the administration of which is vested in him, (mainly and primarily at least) for his own benefit and his own interest in choosing a good representative for himself in Parliament; and, incidentally only, for the rest of the community. To speak of the duties of a voter, then, as partaking of the nature of a trust, except in a sense much too loose and metaphorical to be admitted into an argument, is a mis-use of terms, and therefore a fallacy and a deception.

The real and active responsibility, to which the poorer class of voters are subjected by open voting, is that of which we complain. It is not to the unenfranchised, for whom they hold this fancied trust, but to their Landlords and rich Customers, for whose political benefit I never yet have heard it avowed, whatever may be covertly presumed, that even in the loosest and most metaphorical sense the Constitution ever intended to appoint them trustees.

But, even granting the premises to be as true as they are the reverse, and that the vote *were* a trust for the unenfranchised, nothing can be more illo-

gical or untrue, than the conclusion that *therefore* it must be administered in publick, or under the supervision of the party for whose benefit it is conferred. The first duty of a trustee is to administer the trust, according to his best judgment, for the advantage of him for whom he holds it. To administer it under the supervision of him for whom he holds it is no part of the primary duty. Suppose a case in which it could be shewn that a trust may be better administered for the advantage of the party interested by not admitting him to counsel upon it, and that the informing him of the measures taken would be a publishing of them to other parties, which might be injurious to his interests. In such a case, the clear duty of the trustee would be to leave him uninformed, for the benefit of the affairs in trust. Now, the question before us is whether the interests of the unenfranchised may not be better served under the secret system than under the open, with all the intimidation and corruption incident to it. Until this question shall have been determined, it is an illogical inference, and inconclusive in the highest degree, that, because the franchise is a trust, *therefore* it must be administered openly. We say, there are parties, not the unenfranchised, but parties whose interests and influence usually act in opposition to what we believe to be the advantage of the unenfranchised, who hold a certain power over the trustees. These parties desire to see how the trustees would admi-

nister the trust in that behalf, in order that they may the better arrange their means of defeating it. And the giving them this power is what is called providing that the trust shall be discharged aright.

But it is not manly, say many, to administer it in secret. Now one, and only one, argument "ad homines." I am irresistibly invited to it. This sort of argument, I admit, is not the most conclusive mode of discussing a question; but it does sometimes throw light upon the degree of good faith with which our opponents discuss it.

Who are those who are generally among the foremost to tell the poorer voter that it would not be manly in him to discharge a publick trust by secret suffrage? Among the foremost who tell him so there is one description of persons generally found. A class of publick functionaries; but who, no doubt, then, were always eager, in their own persons, to discharge the publick duties entrusted to *them*, openly before the world—First, from a sense of personal manliness, and secondly, from a conviction that every publick trust ought to be discharged in publick.

It does not appear so. I remember a time when it was a much contested question whether the accounts of Counties should be audited, and the publick money voted at Quarter Sessions, in open Court, or with closed doors. I remember a time when it was a much contested question whether the publick should be admitted as of right within

the doors of a Petty Sessions room. And I also remember that those of that class of publick functionaries who were loudest and firmest in maintenance of the custom of voting away in secret the publick money, *of which they were trustees*, and in behalf of the custom of adjudicating in secret at Petty Sessions, on fines and imprisonments, are now among those who are loudest and firmest in denouncing the unmanliness of a secret vote at an Election. And yet these gentlemen were formally appointed to discharge the trust, (and the duties of a Magistrate *do* come within the description of a trust *in every particular*,) which they thought was best to be discharged by *them* in secret. And yet these gentlemen *were* strictly, legally, penally, answerable for the due discharge of the trust to which *they* were appointed. And yet these gentlemen stood in no need of protection in the discharge of it; for *they* acted under no duress, and no intimidation. And yet it was not held by these gentlemen to be unmanly in *themselves* to baffle, by closing the doors of a justice chamber, the inquisitiveness of the publick as to what was the conduct of each particular Magistrate on each particular case; nor was it with *them* contrary to the spirit of the English Common Law, that the publick money should be dispended, that the publick accounts should be audited and settled, and that trial, judgment, and sentence on Petty Sessions cases should pass, in secret. Yet these gentlemen claim

to be informed how their fellow voters vote at an Election of Members of Parliament. It may, peradventure, be shewn to be right that both Election votes and Magisterial votes should be given publickly, or that both Election votes and Magisterial votes should be given according to a secret system, or that, (considering the Election votes to be strictly a privilege and Magisterial votes to be strictly a trust, and the former to be often given under duress and the latter never,) Election votes should be protected by a secret system, and that Magisterial votes should be given openly. But that Magistrates, charged with the trust of adjudicating on questions of personal liberty and of property both private and publick, and bound to administer the same justly under penalty, should be suffered to vote in secret, and Electors, acting for themselves and answerable in no legal penalty, should be bound, at all risk of being exposed to private vengeance, to vote in publick, is what I cannot reconcile to any principle of reason or of Justice.

Leaving this subject, however, as being somewhat beside the question now in hand, and as being a remonstrance addressed rather against the inconsistency of a certain class of arguers than against their argument in opposition to the Ballot, I will proceed to what appears to me a very important part of our case.

The word "Un-English" is a term which, from the beginning of this long contested question, has

been much in use among the opponents of secret voting. As if the armoury of our native language were not rich enough in weapons of war, and as if English Institutions required for their protection an innovation on the English Vocabulary, a new phrase was cast and forged to be brought into the field against the Ballot. The real force and meaning of this term did not at once strike the understanding. Yet it sounded eminently well, and, so long as the mind did not endeavour to analyse too closely its force and meaning, our love of country and respect for our ancestors were quick to kindle against what was pronounced to be foreign. Till, upon reflection, it suggested itself that each successive reform, by which popular abuses have been checked, and bad laws abated, had been, in its time, an Un-English innovation upon English Custom and Institution. That the first Reformation of our National Religion had been the setting of a German and Genevan graft of Religious Freedom upon the ancient stock of English Popery. That the Revolution, which gave and secured the Crown to that Royal Race which is the perpetual pledge to us of the great principles of our Liberty, had been a disturbing with Dutch and German safeguards for civil Freedom of the ancient system and succession of English Tyranny. That the African Slave Trade, and West Indian Slavery, had been very English. That the close borough system of Representation, and the preposterously bloody

code of Capital Punishments lately repealed, had been specially and peculiarly English.

The opponents of the Ballot have at length begun to gradually disuse and disclaim the word Un-English, as being in itself somewhat unmeaning, and as leading to inconvenient recollections of how many crimes had been from time to time committed and continued by bigots and pretenders under the much abused name of "English." But the term has some meaning nevertheless. And, though gradually forbearing the use of the word, our adversaries make abundant use of the imputation which it had been invented to convey; namely, that, in secret voting, there is something at variance with our most valued national feelings, habits, and institutions.

I am anxious not to leave this subject, nor to suffer our adversaries to leave it thus. I wish to shew that, instead of the system of secret voting being at variance with the general spirit of the English Constitution, it is in the strictest accordance with it. That the principle of discharging a great publick trust by means, the working of which is in secret, and of which the result only is publickly declared, is within the practice, and is of the very essence, of some of our most ancient, most popular, and most important, constitutional functions.

When we assemble, under the trust delegated to us by Law, to determine, by a majority of voices, upon our presentment, whether a sum ought to be

expended, or not, on publick works, or whether or not a fellow citizen shall be put upon his trial for life, liberty, or estate, does each of us, so required to perform this duty, " without fear, favour, or affection, or hope of reward," having heard the evidence, declare his vote openly, in order that the publick, *whose trustee he unquestionably is in the matter at issue*, may be satisfied as to how he has discharged that trust according to the spirit of his duty and his oath? No. The exact contrary. The Grand Juryman's oath binds him to keep secret, not only the counsel of his Sovereign, but likewise his fellows' counsel, and his own. And why? Clearly in order to prevent all canvass, all influence, all intimidation before-hand, and all question after, which might lead to corrupt reward or personal enmity or revenge. Now apply this to Election.

A petty Jury is impannelled to try a damage,—to adjudicate property between man and man,—the whole fortunes of generations between family and family,—to determine finally on the life, liberty, or estate of a fellow citizen, cast for this purpose in *trust* upon it's verdict. Does it, having been put in possession of the evidence, take counsel in open court, and, having so discussed it, does each man openly proclaim his opinion, and give his vote accordingly? Just the reverse. The petty Jurors consult privately as to their verdict. If they disagree, they are locked up in private. They are

carefully barred from all communication with others. The officer who attends them is sworn that none but himself shall speak to them; and himself only to ask them if they have agreed on their collective verdict; nor will the Courts admit any fact to be made to appear by the affidavit of any of the Jurors. And why? In order that the compromise of opinions, which produces finally an unanimous verdict, shall be free and unbiassed, uninfluenced by intimidation or by bribe, and that the publick may never know the particular suffrage of each, which, on comparison and conflict of individual judgments, has led to the general agreement of the whole body.

The members of a Coroner's jury, charged with the enquiry into the gravest of all matters, the enquiry into how a life has been lost, leading often to an indictment for murder, sit in what is now declared by Law to be virtually a secret court,* "Even in cases *where absolute privacy may not be required,*" I quote the words of Lord Tenterden, "the exclusion of particular persons may be necessary and proper. Who then is to decide on this? We again answer the Coroner, and the Coroner alone." It may be said that in some cases there may be supposed to be reasons for secrecy in judicial enquiries and judicial suffrages which do not

* See the case of Garnett v. Ferrand. Barnewall and Cresswell's Reports, vol. 6, p. 611. And the judgment of the whole Court delivered by Lord Tenterden, p. 626, et seq.

apply themselves to judgment given by suffrage on the fitness of a man to be elected representative in Parliament. But the question must not be thus evaded. Remember, the question now is, not as to the application of the principle of Secrecy, but as to the principle itself; whether it be or be not a principle recognized by the Common Law and Constitution of England, that persons charged with *a publick trust* shall give their individual opinions and vote in secret. I instance the case of Jury,—Grand Jury, Petty Jury, Coroner's Jury,—I ask if the charge committed to a Jury be or be not a publick trust, and I ask if the Institution and Practice of Juries be Un-English.

I do not rest much on the practice of balloting in Clubs. Because, in truth, I do not think that in all respects it is strictly analogous with what we are discussing. You ballot in clubs only that you may not be deterred from doing your duty towards the interests of those communities by any apprehension of being, perhaps, obliged in the end to meet in a select society one who shall know that you have voted against his admission. The principle, however, is the same. With reference to clubs the practice is adopted as a protection against a disagreeable and irksome result in select society, which *we* claim as a protection against the much more important evil of an undue result in the formation of the great council of the nation.

But I take my stand upon the principle of secret

voting on Grand Juries, on the principle of secret voting on Petty Juries, and the principle of secret voting on Coroner's Juries; and I say that, so far from its being in conflict with the spirit and usage of English institutions, it is found to be inseparable from the most ancient, the gravest, and most important trusts known to the Constitution or to the Common Law, and that the principle of the Constitution and the Common Law in these trusts is, that the award of the collective body of trustees shall be declared, but not the individual suffrages of the members who compose it. I say again, apply this to Election.

But, say some of our opponents, by way of an argument "in absurdum," give full effect then to your principle. If secret voting be the best safeguard against undue influences, why not adopt that mode of suffrage in Parliament? "I, for my part," Sir Robert Peel is reported to have said, in his speech, June 2, 1835, "can see no reason why, if the Ballot be considered good for the constituents, it should not also be good for the Representatives, and why the Ballot should not be introduced into the House of Commons."

It does seem strange that a mind, generally shrewd and precise in analysis, should have failed to discover at the first glance the very broad and simple distinction, the reason so obvious upon a moment's consideration, not only why the principle of secret voting at Elections could not in any

wise, or by any mode of reasoning, be applied to justifying the manifest absurdity of secret suffrage in Parliament, but, moreover, why the grounds on which secret suffrage at Elections is recommended are directly opposed to secret suffrage in Parliament. It is no less than a confounding of the distinction between Principal and Agent. Members of Parliament are deputed, or according to Blackstone, " delegated,"* by their constituents

* " If it were probable that every man would give his vote freely, and without influence of any kind, then, upon the true theory and genuine principles of liberty, every member of the community, however poor, should have a vote in electing those *delegates* to whose charge is committed the disposal of his property, his liberty, and his life," &c. &c.—*Blackstone*, vol. i. p. 171.

" Delegate."—N. S. " A deputy, a commissioner, a vicar, any one sent to act for or *represent* another."—*Johnson's Dictionary*.

The writer of an article in the last number of the Quarterly Review has enunciated an opposite doctrine to Blackstone's on this subject. Speaking of the effects of Lord Grey's Reform Bill, he says, " Another *novel circumstance*, and one which shews a most important change already effected in the constitution of this country, is that the House of Commons has virtually become an assembly of ' *delegates*.' "—*Quarterly Review*, No. CXVIII. Art. " Prospects of the Country," p. 555. And, in order, as it appears, to mark the more strongly the rejection of Blackstone's doctrine (who, high-prerogative lawyer as he was, had described the Members of the House of Commons as *already* being, according to the English constitution of *his* day, " delegates"), the contested word is marked in *italicks* as above. Verily these Conservatives (some of them) are choice innovators! At all events one thing is clear,—either that the writer of that article has modestly undertaken to break a lance with Blackstone as a constitutional lawyer, or to dogmatise on constitutional law,

for a temporary service of a strictly representative sort, and, on their reappearance before their constituents, are not only answerable to them specially for the votes they have given and for the grounds of them, but have probably, on the evidence of those votes, to be tried whether they be or be not worthy to be trusted with a renewal of that service. Voters at Elections are deputed by nobody, answerable to nobody, and ought not to be dependent on any body for a continuance in possession of their privilege. Members of Parliament are under no influence of intimidation. The majority of voters at elections are. Yes, says the writer of the Article of 1833 in the Edinburgh Review, "Those Members who act under the influence of powerful persons, Officers in the Army, Servants of the East India Company and the Bank, practising Barristers and Solicitors, whose bread may depend on friends and clients, mercantile men having connexions in trade at home or abroad, all must vote in open day, although their vote may be their ruin." Surely the answer to this is, "Volenti non fit Injuria." If he be under influence, nothing binds him to undertake the representation of the people in Parliament. But a dependent voter at elections may be obliged to register and vote upon a qualification which he acquired not by any act of his own, and the possession of which is a burthen and a grievance to him, which

without having made himself acquainted with the doctrine which Blackstone has laid down in the first elementary text book on that subject.

he never would voluntarily have undertaken, and which he would at any time be glad to cast off.

Members of Parliament vote openly in order that their votes may be known to those to whom they are constitutionally answerable. Voters at elections ought, by parity of reasoning, to vote secretly, in order that their votes may *not* be known to those to whom they are *not* constitutionally answerable, and who might impede their using their votes to the advantage of the unenfranchised whose interests the opponents of the Ballot themselves contend that they are bound to represent and protect.

But is this my unsupported view? What says Sir William Blackstone? He states very clearly why, even "if the Ballot were considered good for the constituents, it would not also be good for the Representatives, and why the Ballot should not be introduced into the Commons." Speaking of the voting "privately, or by Ballot," in "Senatorial Assemblies," he says, "This latter method may be serviceable to prevent intrigues, and unconstitutional combinations, but is impossible to be practised with us, *at least in the House of Commons*, where a Member's conduct is open to the future censure of his constituents, *and therefore* should be openly submitted to their inspection." Comm. vol. 1. p. 181.

And here, perhaps, I might close my case. I am not aware of any other objections in popular

use against the principle of secret suffrage; unless it be one which is indeed of a most indeterminate and speculative sort, and which I have already in part and incidentally touched. It is this. That a secret mode of suffrage would check that open declaration and conflict of sentiments which so well accords with the spirit of our country and the general spirit of liberty. That publick measures, and the conduct and qualities of publick men, would no longer be discussed, as now, at publick meetings of the people; that the feelings and judgments of the people would no longer be openly appealed to, or, if appealed to, would no longer openly respond; because such appeal and response would be a declaration of what secret suffrage is meant to conceal. The answer appears short and plain. It never was assumed that the concealment of political *opinions* is to be a compulsory defence with which all men, as well those who do not require it as those who do, are bound to invest themselves. Under the system of Ballot, all are bound to *vote* secretly, in order to unshackle those votes which are now in bondage, and enable those persons who lie under controul to give effect to their principles without the hard necessity of testifying to them by martyrdom. But what is to prevent those who dare, and those who will, from avowing their opinions in publick, although the votes be to be given by ballot? May we not, and

l we not make publick profession of our princi-

ples, though our works be in secret? May we not and shall we not appeal in publick to the reason and feelings of others although we be not allowed to ascertain the effect of our appeal upon the conduct of each? Do not our opponents say, "Depend upon it, even under Ballot, landlords will endeavour, as now, to influence in private," and may not we answer with equal truth, "Depend upon it, so will orators and reasoners, as now, in publick?" A publick appeal to feelings and interchange of reasoning will be then more called for even than now. The practice of the metropolitan parish in which I live, and from which I date this letter to you, gives an instance. In the parish of Marylebonne, our choice of persons to fill our parochial offices is conducted by way of ballot. And yet our discussions of the qualities of men as well as of measures, are as publick, ay and as earnest too I can assure you, as that class of politicians can desire who are generally the most loud against secret voting.

Permit me another observation here, in passing. The phrase, "open expression of opinions in publick," is liable to a fallacy. There are two sorts of opinions, either of which a man may come to publick meetings to express. He *may* come thither to avouch by his voice, and to countenance by his presence and port, his own opinions, freely. He *may*, remember, be sent or led thither to avouch and countenance the opinions of another, slavishly. A man may come under the colours of a party

manfully displayed as the symbols of his own principles and of his power to avow them. He may come under them as under the shameful livery of his own subjection to the principles of another, and the badge of his inability to declare his own. He may come to proclaim with his free voice the sentiments of his own heart and judgment, and to inspire others with the like. He may come but to echo the sentiments of a master, and to shout down those with whom his own heart and judgment, left to themselves, would be in accord. Let not this be mistaken for a collision of publick opinion which assists the spirit of a free nation. It is the reverse. It is part of the action of that influence the most powerful to destroy what Mr. Burke calls the "seminal principle" of publick liberty. This abuse of power, it is true, secret voting could not altogether root out, but would very much tend to abate. Secret voting cannot interfere with what is now the publick expression of opinions genuine and sincere. Doubtless, from the opinions expressed at meetings, if freely given, the votes at elections may be inferred. It may then abate the motive with which men now bring their dependents to publick meetings, to give earnest, by their conduct there, of their future votes. And so much the better. The invariable habit of sealing letters, and the secrecy which the seal affords, give security to the timid and dependent man to communicate his wishes freely, but do not prevent an indepen-

dent man from expressing publickly the same sentiments which the post carries sealed to his correspondent, if he think the expression of them will do him credit, or advance a cause he has at heart.

It is a somewhat hard trial to which we are exposed when we hear our doctrine arraigned as tending to the base and dissembling, and sentence pronounced accordingly from under an ermine of sometimes mock authority, of not impartial judgment, and perhaps too of not unquestionable purity. It would ill become the moderation of argument to retort the imputations, often not very temperately or mannerly cast, on a doctrine which I feel to be built on a pure and noble theory, and which I sincerely believe to tend to the purest result, attained by the purest means. But, from my heart, in behalf of that doctrine, I repel them; and never let us silently brook the hearing it described by those, many of whom busy themselves in inveighing against it instead of acquainting themselves with it, as likely to taint in its passage through the land that fair stream of free suffrage which corrupt and lawless influence is now poisoning at its very source.

If all men privileged to vote were beyond the reach of all undue influence, and every man's open vote could be taken as the record of his conscientious judgment, doubtless the practice of open voting would be not only free from all objection, but entitled to every commendation. The system

of secret voting may not be the best conceivable. But, in the mixed relations of which society is composed, I am convinced that it is the best attainable. That it would fulfil this great object of moral regulation, the making it as easy and safe as possible for a man to perform a duty conscientiously, instead of leaving him exposed to become unnecessarily a glorious martyr to it. I have said I do not consider the Ballot as a specifick for curing all the practical defects of the Reform Bill. Far from it. Amendments are required in the Law of Registration. Amendments are required in the Law of Qualification. And, besides the mere oath against Bribery, (which may be tendered to an obscure Elector, and swallowed in a corner, perhaps in the hearing only of two agents, one of whom may possibly be the very man who bribed him,) a declaration ought to be required from each candidate, and from every party suspected of *having* bribed, before the face of the whole constituency, subject, if false, to the heaviest penalties and to publick exposure from any body who may know it to be so. Any declaration against bribery, short of this, bears too much the appearance of having been framed with a motive of not pursuing too searchingly the crime against which it is directed.

In a few words; I believe the general vice of open voting under influence was never better described, and cannot be better described, than in this short sentence of Mr. Grote's.—" Publicity of

votes cannot convert a single Elector from dishonesty, but it makes a thousand honest voters dishonest against their own intentions."

I have hitherto been arguing this question upon the presumption, as I had a right to do, that the Ballot will afford to the Voter the security of secrecy. In other words, that by the term secret voting is meant secret voting. I have postponed till now the question of whether the secret can be kept. Our opponents tell us that it cannot. Why can it not? Let us analyse the nature of the difficulties with which they threaten us. The first risk of discovery, we are told by the author of the Article of 1833, in the Edinburgh Review, "is from the calculations of the canvassers, who, now that the polling goes on in several places at once, are enabled to check the hourly returns from each booth with their canvass-books, and,—especially if they have a note from the poll-clerks, of who came up during the hour,—to tell pretty accurately whether promises have been kept or broken." This is a most violent begging of the whole question. Under secret voting, the hourly returns would be not only superfluous, but plainly in opposition to the whole system. —Assuredly it would be an essential and obvious provision o a system of secret voting to abolish hourly returns, as most unquestionably they would be tantamount to a publication of the votes.—Assuredly, one of the first provisions of a system of secret voting would be that all the ballotting boxes

at each polling place shall be kept locked and sealed, until the polling shall be over, and then transmitted, locked and sealed still, to the central place from which the return is to be made, there to be opened, and the numbers to be declared.

It is waste of time, however, to discuss the means which the Law will doubtless provide, and easily provide, for carrying into effect its own principle of secrecy, whenever the principle shall be admitted and adopted. I heard of a person dissuading another from taking a very eligible country mansion. After other dissuasives had failed,—"Depend on it," said he, "the house never will suit you.—There's a crooked old pear tree stands just before the drawing-room window, and there is not a chicken-coop on the premises." The principle of taking the house having been adopted, the pear-tree was cut down, and a sufficient number of very good chicken coops made out of the wood of it.

I have no fear but that the law will find minds ingenious enough in framing its provisions, and spirits resolute enough in executing them, to make head against the devices which the antagonists of the principle now find it convenient to menace us withal, as being beyond the wit of man or of man's laws to vanquish. At all events I take it as matter of certainty that any law to establish secret voting would in the first three clauses remove any difficulties out of the way which lie so obvious and bare upon the surface as that of the hourly publication of the poll.

It would be tedious and superfluous to demonstrate, in answer to each and every mode suggested of baffling the machinery of secret voting, how each particular difficulty of this sort is to be removed by some very easy arrangement, which would render it not only too toilsome and complicated an enterprize for the enquirer to inform himself how each vote has been given, but even for the voter under influence to give any evidence of how he has voted, beyond that of his own word.

Perhaps the machine suggested by Mr. Grote, (to whose energy and industry this question owes more than to any other man's in England,) might, in despight of its neatness and ingenuity, be baffled by combination; suppose, for instance, that each voter under influence be directed to give, within hearing of an agent, some understood signal by voice, when he approaches the machine, and suppose the officer who sits behind it, (and who puts forward the card containing the candidates' names, which is to be pricked by the voter,) to be also under that influence, and, hearing the pre-arranged signal, to mark the card in such a manner as to give evidence to the agent, when the cards shall be produced, how such a voter shall have pricked such a card. I know not whether such a fraud could or could not successfully be committed. Perhaps, in my judgment, the mechanical principle suggested by Mr. Babbage, as is likely to be the case with the suggestion of the first practical authority of this or

I believe any other country, is the one which entirely defeats any conceivable artifice by which proof of how a vote has been given can be either surreptitiously obtained or voluntarily afforded. But, again I say, these disquisitions are, for the present, lost time. We may depend upon it that a law which enacts secrecy will be able thoroughly to enforce its own principle.

We are told that the arbitrary landlord will give notice, before an Election, that he will eject all his tenants at will, if his favourite candidate be unsuccessful; and that thus, through fear, a tenantry would be brought, as now, to poll with one consent for their tyranical and unjust Landlord. First observe, granting so extreme and exaggerated a case of threat, and granting the threat to succeed, it leaves the evil only where it is now. It does not make it worse. But a threat of extreme and exaggerated injustice, an injustice, too, manifestly involving great inconvenience to the oppressor, and which the oppressed may therefore reasonably conclude will not be carried into effect, is very apt to act in the inverse direction to what is intended, and to provoke to a trial of resistance on the other side, which may be well expected to be attended with practical impunity.

No Landlord could easily take, thus suddenly, his whole estate into his own hands, particularly with a very uncertain prospect, after such a display of violence towards one tenantry, of being able imme-

diately to find another. But, for reasons which I will presently shew, no Landlord could even threaten it. A Landlord, it is suggested by the Article of 1833, in the Edinburgh Review, might not indeed eject a whole tenantry; he might select a few of the most grievously suspected; it must not be a chance decimation of a tenantry, for that would convey no moral, and no warning. But here appears a difficulty. In a case of political mutiny like this, the Landlord must select either good tenants for immolation, or bad ones. The first would be, unquestionably, the more striking lesson, but one that would not pass without a rather large sacrifice on his own part. Would his vengeance fall then on bad tenants? In that case the political lesson might fail; since, peradventure, his real motives in ejecting such men might be, however mistakenly, suspected to be rather their agricultural than their political unworthiness.—"Otherwise," some other tenant might say, "why did not the Squire eject some better farmer, who, we might *then* have been sure, lost his farm *only* because he did not vote with the Squire? If he *had*, indeed, I *should* be afraid of going against him."—And then comes Vanity, the universal passion; and [illegible]ncludes the category thus:—"If the Squire [illegible]turns *bad* tenants out for this sort of thing, I [illegible] he knows too well what he is about ever to [illegible] out." And thus the man places himself [illegible]ove the action of fear or influence.

But then, it is said, the Landlord will prevent his tenants from voting at all. Then we have gained full half, and the better half, of our battle. Although we have lost the chance of his tenants voting under the discipline of their own conscience, we have at least gained the certainty of their not voting under that of his dictation, and we have disarmed him of his corrupt power, which it is the object of the Ballot to do.

Perhaps the Ballot may incidentally also produce the very secondary good of substituting for tenures at will, the more wholesome system of leases, when the power of ejectment on notice to quit shall have ceased to be useful for political purposes; and thus may, among other benefits, tend to raise the position of the farmer, and give him better security in the application of his capital and industry.

But in truth this is wrestling with shadows. I said that there are reasons why a Landlord could not, if Ballot were the law, even threaten a tenantry at will with these proceedings. There is an influence in England to the full as strong as the law, and which always, where an individual with selfish views, endeavours to baffle or evade the law, takes part with the law. An influence which no man or party in the State can long resist. And this is publick opinion. "Would you relieve the Voter," I have heard the opponents of the Ballot say, "from the action of public opinion?" Better, I answer, than that he should offend publick opinion

by voting under dictation. If I could believe that publick opinion had any influence with the majority of voters at the polling booth, I might hesitate on recommending the secret system. But You, Sirs, You who threaten to retain by secret ways your power to influence and punish, and who boast that you will maintain, in defiance of the Law, a power of inquisition which the Law declares you shall not have; while you are doing all this, where is the action of publick opinion on *you?* Where is *your* respect for that judgment of the people under which, you say, each voter ought to use his suffrage? Where is *your* loyalty to the Laws? For, remember, what you threaten and what you boast, is that, when the Law shall have passed, the Law shall be ineffectual to controul you. What boots it then that I have a lock upon my casket, and that the Law makes the opening of it without my consent punishable? For you have a false key, you say, which you can apply at pleasure, and your crime can neither be prevented nor detected. What boots it that I seal my letter, and that the Law makes it punishable in you to break open a letter addressed to another? You have counterfeited my seal, say you, and can at any time read my letter with impunity.

When the Repeal of the Test and Corporation Acts had been forced by publick opinion on an Administration which had to the utmost opposed it,—

when the same Administration, bending before the menace of Mr. O'Connell, and before the unnatural power with which its Irish measures had invested him, had yielded up, without grace or dignity, Roman Catholick Emancipation, which it had long denied to the claims of Justice and Imperial Policy, those who had to the last withstood all proposals of relief for Protestant Dissenters and Roman Catholicks, took credit to themselves for saying, "We regret the determination of Parliament, but we now resign ourselves to what is the Law of the Land." Since Lord Grey's Reform Bill has passed, those who had taken part against every clause in it, and had called Schedules A and B indiscriminately, "Corporation Robbery," and "Spoliation of Property," not only have enunciated their submission to it as to the Law of the Land, but also their approbation of the abolition of close Boroughs, and now proclaim themselves to be, in principle, Parliamentary Reformers—I say that, in this case also, the threat and the boast of some that they will be too strong or too shrewd for the Law, may serve a temporary purpose, and may even lead them to deceive themselves, but will not bear examination. Once the law of the land, the law of secret suffrage, like every other law of the land, must be obeyed and carried out to its full intent. Those who are good subjects will then obey and endeavour to assist its purposes. Those who are

not good subjects will generally be controuled by publick opinion from breaking or evading, for objects of their own, the spirit of the law, and may perhaps find any very violent or manifest counteraction of it made more easily punishable than those persons who have looked at the subject only from a distance may now imagine. But the Law will not be generally resisted or evaded. It is not the general spirit of any great party in the State long to resist or evade the declared intention of the Law; particularly where that party happens by construction to consist of persons on whom publick opinion may be hoped to have an in uence commensurate with what they owe to publick example.

And here I close the argument, as it presents itself to my mind, in favour of Election by Ballot. I have not touched upon the question of its operation in America, in France, in Belgium, in the ancient policies of Greece or Rome, because indeed I think it does not apply itself very closely to the practical subject before us, and may in some respects tend rather to mislead our judgment than assist it. From the example of countries whose form of government differs in important respects from our own, where many local circumstances, where the state of property itself, may make institutions applicable and beneficial, or the reverse, which might be very different in their application here, any attempted reasoning by analogy might grossly deceive us. I

have confined my arguments to England, with its general habits and constitution such as they are, and to the application of the Ballot to our English objects.

I am not aware that I have passed by without notice any of the principal and important topicks on which our adversaries, as far as I have been able to collect from their publick speeches and writings, and from their reasonings in private society, profess mainly to rely.

I have endeavoured to shew that something is wanted to remedy the grievous abuses which now arise out of open voting. That the Ballot, instead of having a tendency to engender any new fraud and falsehood, cannot engender any new, but goes directly to abolish an old one. That, instead of it's being true that while it would weaken the influence which one man's property gives him over the suffrage of another it would afford no effectual security for the freedom of the voter, these two propositions are entirely incompatible with each other; but that yet the reverse of both may be and are together true;—that it would give security for the freedom of the voter, and that it would weaken only the usurped influence and strengthen the legitimate. That, as far as the Elective franchise can be correctly described as a trust, it may be more beneficially discharged, and more in accordance with the spirit of English Common Law, and with the

general spirit of manliness and freedom, by secret suffrage than by open. That secret suffrage would rather encourage than discountenance and check open and free discussion on the qualities of publick men and publick measures ;—and, lastly, that it would be a substantial protection to the poorer voter against the attempts made by usurped power to controul, detect, and punish his free use of his lawful franchise.

I cannot but feel confident that a few years of discussion will suffice to achieve this great benefit, as a few years of discussion have formerly achieved other great benefits by gradually wearing down a powerful mass of strongly conceived prejudice. And I feel the more confident of it, because, among those persons who are opposed to the Ballot, besides the merely self-interested, there is a large majority of honourable and publick minded men who resist it from what, though I believe them to be impressions formed not upon due consideration of the whole subject in all its relations, I am persuaded are thoroughly honest impressions made by an unenquiring notion of there being something base and cowardly in the very principle and essence of secret suffrage. Of the gradual conversion of a majority, so composed, if I am sincere in my own conviction of the truth and justice of the foregoing argument, I can have no doubt.

I cannot, however, bring myself to agree with those friends of the Ballot who call on the Ministers to make it what is termed an "open question," and who augur great advantage to the cause by it's being so left, without any opinion authoritatively pronounced upon it by the government of the country. Those, if there be any of that opinion, who think that the decision, whether one way or the other, on the ballot is matter of very little national importance, are at liberty to call on the Government, as in the case of a turnpike road, a canal, or a rail road, to absolve its members from the duty of acting upon it together. But those who think, as I do, that it will be a very great and important change, have no right to call on the Government to adopt a course so much at variance with its duties as to leave it an open question. Those who think, as I do, that it will be a great and important change for the better have no right to call on the Government to adopt a course so demonstrably unfavourable to its progress.

I say so much at variance with the duties of Government. A Government is bound by the duties it undertakes to be answerable to the country for every important national act it recommends or supports. Short of this principle of collective official responsibility being carried out in all its breadth and to its full extent, Parliament loses a great part of its due controul over every govern-

ment, and the nation loses the constitutional security which consists in making every government answerable for every great measure which receives through the Ministers the countenance of the Crown. It is vain to talk, as applicable to this question, of the right of every member of Parliament, whether a member of a government or not, to vote according to his opinion. Unquestionably such is his right, and unquestionably such is his duty as a Member of Parliament. But it is equally clear that two men holding directly opposite opinions on an important national question which presses for decision, the one thinking it mischievous that the question should pass, and the other thinking it mischievous that the passing of it should be delayed, cannot, consistently with their duty to their Sovereign and their Country, fitly meet their official responsibility together. A member of a government although favourable to Ballot, and although sincerely wishing to see it established, may with perfect honesty give his vote against it's being entertained, if in his judgment and conscience he be persuaded that the circumstances under which and the time at which it is proposed are absolutely and proveably unfavourable to its success; or if, by a concession of his own on this subject, he have won over the consent of his colleagues to some other act of important benefit to the country, on which there

would have been no agreement if he had been extreme in consenting to no measure of which the ballot should not form a part. But to record his vote in Parliament for the adoption of a great change, in opposition to colleagues who as strongly pledge their opinions that it ought to be resisted, appears to me to be a mischievous compromise between his responsibility to the country as a Member of Parliament, and his responsibility to the country as a Member of the Government.

And I said I thought it would be a course demonstrably unfavourable to the progress of the question itself. I think so for this reason. That, in every example we have had of what is called an "open question," it invariably happens that the real influence of the Government is with the side which is for leaving matters as they are. And it is in the nature of things that it should be so.

Mr. Pitt was the first Prime Minister, I believe, who ever admitted the action of that unhappy principle of leaving a great question "open" among the members of a government. With right opinions and feelings himself on the atrocity of the African Slave Trade, with all his great power and generally lofty and uncompromising spirit, at the head of an administration, he suffered a majority of his subordinate colleagues to systematically impede his

declared wishes on the great cause of abolition, and the influence of the court, and, through the court, of the government, to be used for more than twenty years in retarding it; and, by retarding it, in prolonging the unspeakable miseries and crimes of that dreadful traffick. The proof that it was so retarded by being suffered to be treated as an open question, is that, when Lord Grenville's bills were made a cabinet measure by the government of 1805-6, that administration, during its short existence, had the merit and the glory, of at once and finally abolishing the British Slave Trade.

The Restoration of their Civil Rights to the Roman Catholicks was, for many years, an "open question." True, during that period it gradually but very slowly advanced by its own irresistible force both of justice and expediency against a great mass of opposition. But, during all that time, although supported by the eloquence of Mr. Canning, and the individual influence of Lord Londonderry, Catholick Emancipation made small visible approach towards its consummation. Until, under the Government of those who had been its most powerful opponents, it was suddenly made a Cabinet Question; and then it instantly became Law.

Some years may perhaps yet be to pass, and many difficulties to be overcome, before any Government may be in a position to carry Election by Ballot

through Parliament into the Statute Book.* But I do feel persuaded that it would but be retarded and put aside by being dealt with as an open question, on which a minority in the Government

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* It is said that the Lords *never* will consent to the Ballot. When or how it is likely that they may be moved to do so is, I apprehend, a consideration, (although of great importance, doubtless, whenever it shall have been adopted by the Commons) very wide of the practical question before the Commons now. The Lords consented to the Roman Catholick Relief Bill. The Lords consented to the Parliamentary Reform Bill. I wish not to discuss extreme cases, or expedients, which one always trusts that the good sense and conciliatory feeling of the Upper House may render useless even in speculation. It cannot but be seen certainly that, if ever there were a subject affecting almost singly the interests and privileges of the Lower House, it is that of the mode in which its members shall be elected, subject to the lawful qualifications of the Electors. The House of Commons has, in times of undenied precedent, made its own resolutions effective on subjects much less intimately affecting its exclusive privileges, much less within its own immediate power, and directly touching the common law-rights of Electors. Far more violent, and far less clearly within its powers to carry into effect than to resolve that no member shall sit and and vote within the House, who shall have been elected by any mode save that of secret Election by Ballot. These extreme cases, which justify themselves only by publick necessity and proveable self-defence, it is neither l nor wise to make part of a general argument.

should be suffered to make a show of supporting it by their votes in presence of their constituents, while a majority of their colleagues would annually defeat it, and the necessity be never felt, even when the occasion may be favourable and the measure ripe in publick opinion, of making it an act recommended on the constitutional responsibility of an unanimous administration.

Those in Parliament and in the country who entertain the opinions I have endeavoured to set forth may be well content though, for a short space, (I think it will not be a long one,) they hear those opinions stigmatized by some as Un-English. We long endured the being called spoliators of private property while we demanded the abolition of Slavery. We long endured the being called Popish innovators while we stood for the ancient distinctive doctrine of Protestantism, which I hold to be Liberty of Conscience without any of those consequences of Civil Penalty which can be attempted to be justified only in a Church assuming to itself Religious Infallibility. In these our days, many great principles are established and effected within the life of one generation of men. We have already seen Religious Liberty proclaimed to the Roman Catholick and to the Protestant Dissenter, though we remember when the enterprise was called flat Popery. We have already seen the chains struck off by Law from the British West

Indian Slave, and the making of Slaves rendered a capital felony. And yet we remember when the forced labour of the Negro was called the property of him whose only original title to it was an act of Robbery, and when the deservedly capital felony was daringly defended on the Gospel. We have already seen carried almost by acclamation through Parliament the repeal of that bloody code against which Romilly, one of the greatest-minded, and Mackintosh, one of the most amiable and philosophick of practical Statesmen, successively during their immortal efforts could scarce carry with them a hundred votes in the Commons.

We have seen Lord Grey's Reform Bill pass into a Law. And yet we remember the times when the disfranchisement of Grampound, Penryn, or East Retford, on any thing like the avowed principle of "representation instead of nomination," would have been termed, nay was termed, a Democratick Revolution.

And I do feel assured that, before very long, the principle of Secret Voting will work it's way into acceptance, under its real character, as the only practical protection against those influences, which, when effectually provided against by law, will be stripped of the gentler names which now disguise them, and be known and remembered only as what indeed they are, an usurpation on the Constitution

of England, and an abuse and corruption of the privileges it provides.

I am, my dear Lord Durham,

Your Lordship's very faithful

Friend and Servant,

NUGENT.

Chandos Street, Nov. 10, 1837.

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G. B. C.
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